

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code subsections 455A.6(6)“a,” 455B.105(3) and 455B.392(1)“c,” the Environmental Protection Commission hereby amends Chapter 133, “Rules for Determining Cleanup Actions and Responsible Parties,” Iowa Administrative Code.

Iowa Code section 455B.392(1)“c” provides that a person having control of a substance is strictly liable to the state of Iowa for damages to natural resources caused by a hazardous condition. The Commission has adopted requirements in paragraph 133.6(3)“b” setting out the methods for counting dead fish and assigning a monetary value for specific fish species. These requirements are based on the Natural Resource Commission (NRC) fish restitution rules in 571—Chapter 113. NRC rule-making authority is derived from Iowa Code section 481A.151, which authorizes use of both the American Fisheries Society methods and values and also an alternative method for assigning monetary values to game fish valued at not less than \$15 per fish. The NRC has also initiated a rule making incorporating the same changes herein.

Rule 567—133.2(455B) has been amended in the following manner: First, the adopted amendments redefine the meaning of “AFS,” the acronym used for the American Fisheries Society’s special publications on fish-counting methods and restitution valuation. The language has been updated to state that Special Publication 30, the most current AFS publication regarding fish-counting methods and restitution valuation, shall be used by the Department. Second, the amendment of subparagraph 133.6(3)“b”(3) revises the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8122B**. No changes have been made to the amendments published under Notice.

These amendments are intended to implement Iowa Code sections 455B.392, 456A.23, and 481A.2. These amendments shall become effective February 17, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **567—133.2(455B,455E)**, definition of “AFS,” as follows:

“AFS” means the Special Publication 24 30, “Investigation and ~~Valuation of Fish Kills~~ Monetary Values of Fish and Freshwater Mussel Kills,” published by the American Fisheries Society.

ITEM 2. Amend subparagraph **133.6(3)“b”(3)** as follows:

(3) The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger). the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger, and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.

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